

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

A&R LOGISTICS, INC.,

Plaintiff,

v.

PACCAR, INC. and
KENWORTH TRUCK COMPANY,

Defendants.

Case No.: 2:15-cv-14765
(Removal from Circuit Court of
Wood County, West Virginia
Civil Action No. 15-C-451)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant PACCAR, Inc. ("PACCAR"), through undersigned counsel, hereby timely removes the above-captioned action currently pending in the Circuit Court for Wood County, West Virginia, to the United States District Court for the Southern District of West Virginia, Charleston Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of removal, PACCAR states as follows:

I. NATURE OF REMOVED ACTION

1. On September 14, 2015, Plaintiff filed its Complaint against the above captioned Defendants in the Circuit Court of Wood County, West Virginia (Civil Action No. 15-C-451). Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint served upon PACCAR is attached to this Notice as "Exhibit A." PACCAR was served with a copy of the Summons and Complaint on October 20, 2015. See Exhibit A. In addition, as required by L.R. Civ. P. 3.4(b), a copy of the docket sheet from the state court action is attached as "Exhibit B."

2. Kenworth Truck Company is an unincorporated division of PACCAR and is thus not a proper corporate defendant. See Ex. A at ¶ 3.

3. The Complaint alleges that Defendants are liable to Plaintiff for damages to real and personal property sustained as a result of a vehicle fire inside a commercial building located in Parkersburg, West Virginia. See Exhibit A at ¶¶ 8-29.

4. Plaintiff alleges that Defendants are liable for damages sustained due to the fire under theories of negligence, strict liability, and breach of warranty. See *id.* at ¶¶ 14-29.

II. TIMELINESS OF REMOVAL

5. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days of service of the Summons and Complaint upon PACCAR on October 20, 2015.

III. VENUE IS PROPER

6. Venue in this case is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to this action occurred in and the property that is the subject of this action is situated in the Southern District of West Virginia, Charleston Division.

7. Likewise, pursuant to 28 U.S.C. § 1441(a), venue is proper because the Southern District of West Virginia, Charleston Division, embraces Wood County, West Virginia, the place where this action was pending.

8. In accordance with 28 U.S.C. § 1446(d), PACCAR has contemporaneously filed a copy of this Notice of Removal (without exhibits) with the clerk of the Circuit Court for Wood County, West Virginia. A copy of the written Notice to State Court of Removal is attached hereto as "Exhibit C." PACCAR also has given

written notice to Plaintiff by contemporaneously serving a copy of this Notice of Removal and Exhibit C on counsel for Plaintiff.

9. No previous application has been made for the relief requested herein.

IV. BASIS OF REMOVAL

A. Diversity Jurisdiction Between Plaintiff and Defendants Exists.

10. Pursuant to 28 U.S.C. § 1332(a), this Court has original subject matter jurisdiction over this action because the suit is a civil action between citizens of separate states; to wit, Plaintiff A&R Logistics, Inc. is an Illinois corporation with its principal place of business in Kentucky; Defendant PACCAR, Inc. is a Delaware corporation with its principal place of business in Washington; and Defendant Kenworth Truck Company is an unincorporated division of PACCAR with its principal place of business in Washington. See Exhibit A at ¶¶ 1-3.

11. Complete diversity jurisdiction therefore exists because Plaintiff and Defendants are citizens of different states. See 28 U.S.C. § 1332(a)-(c).

B. The Amount in Controversy Requirement is Satisfied.

12. As required by 28 U.S.C. § 1332(a), the amount in controversy is greater than \$75,000.00, exclusive of interest and costs.

13. Plaintiff's Complaint specifically alleges that Defendants are liable "in an amount in excess of \$200,000.00..." See Exhibit A at pp. 6-7.

14. Accordingly, based on Plaintiff's own allegations, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

V. STATEMENT OF CONSENT TO REMOVAL

15. In accordance with 28 U.S.C. § 1446(b)(2)(A), *Mayo v. Bd. of Educ.*, 713 F.3d 735, 742 (4th Cir. 2013), and *Stevens v. Thornsberry*, Civil Action No. 2:13-cv-31719, 2014 U.S. Dist. LEXIS 112020 (S.D. W. Va., Aug. 13, 2014), Defendants PACCAR, Inc. and Kenworth Truck Company have all consented to removal.

WHEREFORE, Defendant PACCAR, Inc., pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, removes this case from the Circuit Court of Wood County, West Virginia to the United States District Court for the Southern District of West Virginia, Charleston Division.

Dated: November 5, 2015

PACCAR, INC.
By Counsel

/s/ Russell A. Williams
Thomas V. Flaherty (WV Bar # 394)
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2015 I electronically filed the foregoing Notice of Removal via the CM/ECF system, and I caused a true copy to be served on the following counsel of record via U.S. Mail, postage prepaid, in envelopes addressed as follows:

Charles R. Steele, Esq.
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360 Lee Avenue
Clarksburg, WV 26301

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Swathmore, PA 19081

Counsel for Plaintiff

/s/ Russell A. Williams
Russell A. Williams (WV State Bar #12710)